



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART IV

#### EDUCATION

##### Modifications etc. (not altering text)

- C1** Pt. 4: power to amend or repeal Pt. 4 conferred (W.) (prosp.) by Education (Wales) Measure 2009 (nawm 5), [ss. 18, 26](#)

### [<sup>F1</sup>CHAPTER 1

#### SCHOOLS]

##### Textual Amendments

- F1** Pt. IV: Chapter heading, cross-heading and s. 28A inserted (E.W.S.) (1.9.2002) by [2001 c. 10, s. 11\(1\)](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217, art. 3, Sch. 1 Pt. 1](#)

#### *[<sup>F2</sup>Duties of responsible bodies]*

##### Textual Amendments

- F2** Pt. IV Ch. 1: Cross-heading and s. 28A inserted (E.W.S.) (1.9.2002) by [2001 c. 10, s. 11\(1\)](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217, art. 3, Sch. 1 Pt. 1](#)

### [<sup>F3</sup>28A Discrimination against disabled pupils and prospective pupils

- (1) It is unlawful for the body responsible for a school to discriminate against a disabled person—

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- (a) in the arrangements it makes for determining admission to the school as a pupil;
  - (b) in the terms on which it offers to admit him to the school as a pupil; or
  - (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.
- (2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.
- (3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being—
- (a) education; or
  - (b) an associated service.
- (4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.
- (5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.]

#### Textual Amendments

**F3** S. 28A inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 11(1) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F4</sup>28B Meaning of “discrimination”

- (1) For the purposes of section 28A, a responsible body discriminates against a disabled person if—
  - (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 28A, a responsible body also discriminates against a disabled person if—
  - (a) it fails, to his detriment, to comply with section 28C; and
  - (b) it cannot show that its failure to comply is justified.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—
  - (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
  - (b) that its failure to take the step was attributable to that lack of knowledge.
- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.

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- (5) Subsections (6) to (8) apply in determining whether, for the purposes of this section—
- (a) less favourable treatment of a person, or
  - (b) failure to comply with section 28C,
- is justified.
- (6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.
- (7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (8) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but
  - (b) it fails without justification to comply with that duty,
- its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.]

#### Textual Amendments

**F4** S. 28B inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 12 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F5</sup>28C Disabled pupils not to be substantially disadvantaged

- (1) The responsible body for a school must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (2) That does not require the responsible body to—
- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
  - (b) provide auxiliary aids or services.
- (3) Regulations may make provision, for the purposes of this section—
- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
  - (b) as to steps which it is always reasonable for a responsible body to have to take;
  - (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
  - (d) as to steps which it is never reasonable for a responsible body to have to take.
- (4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to

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any relevant provisions of a code of practice issued under [<sup>F6</sup>section 14 of the Equality Act 2006.]

- (5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.
- (6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person’s disability to be treated as confidential and which satisfies either of the following conditions—
  - (a) it is made by that person’s parent; or
  - (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.
- (8) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.]

#### Textual Amendments

- F5** S. 28C inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 13 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F6** Words in s. 28C(4) substituted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 46 (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)

#### Modifications etc. (not altering text)

- C2** S. 28C: Functions of a local education authority made exercisable by authorised persons (1.4.2002) by S.I. 2002/928, art. 3, Sch. 3 para. (q)

### [<sup>F7</sup>28D Accessibility strategies and plans

- (1) Each local education authority must prepare, in relation to schools for which they are the responsible body—
  - (a) an accessibility strategy;
  - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
  - (a) increasing the extent to which disabled pupils can participate in the schools’ curriculums;
  - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.

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- (3) An accessibility strategy must be in writing.
- (4) Each local education authority must keep their accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) It is the duty of each local education authority to implement their accessibility strategy.
- (6) [<sup>F8</sup>An inspection under section 38 of the Education Act 1997 (inspections of local education authorities) may extend to the performance by a local education authority of their functions in relation to the preparation, review, revision and implementation of their accessibility strategy.]
- (7) Subsections (8) to (13) apply to—
  - (a) maintained schools [<sup>F9</sup>and maintained nursery schools];
  - (b) independent schools ; and
  - (c) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the [<sup>F10</sup>Welsh Ministers], under section 342 of the Education Act 1996.
- (8) The responsible body must prepare—
  - (a) an accessibility plan;
  - (b) further such plans at such times as may be prescribed.
- (9) An accessibility plan is a plan for, over a prescribed period—
  - (a) increasing the extent to which disabled pupils can participate in the school's curriculum;
  - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.
- (10) An accessibility plan must be in writing.
- (11) During the period to which the plan relates, the responsible body must keep its accessibility plan under review and, if necessary, revise it.
- (12) It is the duty of the responsible body to implement its accessibility plan.
- (13) An inspection under the [<sup>F11</sup>Part 1 of the Education Act 2005] may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.
- (14) For a maintained school [<sup>F12</sup>or maintained nursery school], the duties imposed by subsections (8) to (12) are duties of the governing body.
- (15) Regulations may prescribe services which are, or services which are not, to be regarded for the purposes of this section as being—
  - (a) education; or
  - (b) an associated service.

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(16) In this section and in section 28E, “local education authority” has the meaning given in section 12 of the Education Act 1996.

[<sup>F13</sup>(17) In this section—

“prescribed” means prescribed in regulations;

“regulations” means—

- (a) in relation to England, regulations made by the Secretary of State, and
- (b) in relation to Wales, regulations made by the [<sup>F10</sup>Welsh Ministers].]

(18) “Disabled pupil” includes a disabled person who may be admitted to the school as a pupil.

(19) “Maintained school” and “independent school” have the meaning given in section 28Q(5).]

#### Textual Amendments

- F7** S. 28D inserted (E.W.S.) (1.7.2002 for specified purposes and otherwise 1.9.2002 for E.S and 8.10.2003 for W.) by 2001 c. 10, ss. 14(1), 43(3) (with s. 43(13)); S.I. 2002/1721, art. 4, Sch. Pt. II; S.I. 2002/2217, art. 4, Sch. 1 Pt. II; S.I. 2003/2532, art. 2, Sch.
- F8** S. 28D(6) repealed (E.W.) (1.4.2005 for E. and 31.7.2008 for W.) by Children Act 2004 (c. 31), ss. 64, 67, Sch. 5 Pt. 3; S.I. 2005/394, art. 2(2)(g); S.I. 2008/1904, art. 2(c)
- F9** Words in s. 28D(7)(a) inserted (W.) (31.10.2005) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005 (S.I. 2005/2913), reg. 3
- F10** S. 28D(7)(c)(17)(b): words substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order (S.I. 2007/1388), arts. 1, 3, {Sch. 1 para. 51(3)}, the amending provision coming into force immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F11** Words in s. 28D(13) substituted (1.9.2005 for E. and 1.9.2006 for W.) by Education Act 2005 (c. 18), ss. 61, 125, Sch. 9 para. 8; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch.
- F12** Words in s. 28D(14) inserted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 26 (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F13** S. 28D(17) substituted (30.6.2005) by Disability Discrimination Act 2005 (c. 13), ss. 19(1), 20(3)-(6), Sch. 1 para. 24(2); S.I. 2005/1676, art. 2(1)(c)

#### Modifications etc. (not altering text)

- C3** S. 28D(1)-(3)(5)(6): Functions of a local education authority made exercisable by authorised persons (E.) (1.4.2002) by S.I. 2002/928, art. 3, Sch. 3 para. (r)

#### [<sup>F14</sup>28E Accessibility strategies and plans: procedure

(1) In preparing their accessibility strategy, a local education authority must have regard to—

- (a) the need to allocate adequate resources for implementing the strategy; and
- (b) any guidance issued as to—
  - (i) the content of an accessibility strategy;
  - (ii) the form in which it is to be produced; and
  - (iii) the persons to be consulted in its preparation.

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- (2) A local education authority must have regard to any guidance issued as to compliance with the requirements of section 28D(4).
- (3) Guidance under subsection (1)(b) or (2) may be issued—
  - (a) for England, by the Secretary of State; and
  - (b) for Wales, by the [<sup>F15</sup>Welsh Ministers].
- (4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.
- (5) If the Secretary of State asks for a copy of—
  - (a) the accessibility strategy prepared by a local education authority in England, or
  - (b) the accessibility plan prepared by the proprietor of an independent school (other than [<sup>F16</sup>an Academy]) in England,the strategy or plan must be given to him.
- (6) If the [<sup>F17</sup>Welsh Ministers ask] for a copy of—
  - (a) the accessibility strategy prepared by a local education authority in Wales, or
  - (b) the accessibility plan prepared by the proprietor of an independent school [<sup>F18</sup>(other than an Academy)] in Wales,the strategy or plan must be given to [<sup>F19</sup>them].
- (7) If asked to do so, a local education authority must make a copy of their accessibility strategy available for inspection at such reasonable times as they may determine.
- (8) If asked to do so, the proprietor of an independent school which is not [<sup>F20</sup>an Academy] must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.]

#### Textual Amendments

- F14** S. 28E inserted (E.W.S.) (1.7.2002 for specified purposes and otherwise 1.9.2002 for E.S. and 8.10.2003. for W.) by 2001 c. 10, ss. 15, 43(3) (with s. 43(13)); S.I. 2002/1721, art. 4, Sch. Pt. II; S.I. 2002/2217, art. 4, Sch. 1 Pt. II; S.I. 2003/2532, art. 2, Sch.
- F15** Words in s. 28E(3)(b) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1, 3, Sch. 1 para. 52(2), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F16** Words in s. 28E(5)(b) substituted (26.7.2002) by 2002 c. 32, s. 65, Sch. 7 para. 5(2)(a) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 2
- F17** Words in s. 28E(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1, 3, Sch. 1 para. 52(3), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F18** Words in s. 28E(6)(b) inserted (26.7.2002) by 2002 c. 32, s. 65, Sch. 7 para. 5(2)(b) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 2
- F19** Word in s. 28E(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order (S.I. 2007/1388), arts. 1, 3, {Sch. 1 para. 52(3)}, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day

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of the first appointment of a First Minister on 25.5.2007) - see **s. 161(5)** of the Government of Wales Act 2006.

**F20** Words in s. 28E(8) substituted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(2)(c)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**

*[<sup>F21</sup>Residual duty of education authorities]*

**Textual Amendments**

**F21** Pt. IV Ch. 1: Cross-heading and ss. 28F, 28G inserted (E.W.S.) (1.9.2002) by 2001 c. 10, **s. 16** (with s. 43(13)); S.I. 2002/2217, **art. 3, Sch. 1 Pt. 1**

**[<sup>F22</sup>28F Duty of education authorities not to discriminate**

- (1) This section applies to—
  - (a) the functions of a local education authority under the Education Acts; and
  - (b) the functions of an education authority under—
    - (i) the Education (Scotland) Act 1980;
    - (ii) the Education (Scotland) Act 1996;<sup>F23</sup> . . .
    - (iii) the Standards in Scotland’s Schools etc. Act 2000.<sup>[F24]</sup>; and
    - (iv) the Education (Additional Support for Learning) (Scotland) Act 2004<sup>F25</sup>.]
- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against—
  - (a) a disabled pupil; or
  - (b) a disabled person who may be admitted to a school as a pupil.
- (4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.
- (5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (6) In this section and section 28G, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (7) “The Education Acts” has the meaning given in section 578 of the Education Act 1996.
- (8) In this section and section 28G, “education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.]

**Textual Amendments**

**F22** S. 28F inserted (E.W.S) (1.9.2002) by 2001 c. 10, **s. 16** (with s. 43(13)); S.I. 2002/2217, **art. 3, Sch. 1 Pt. 1**

**F23** Word preceding s. 28F(1)(b)(iii) omitted (30.6.2005) by virtue of The Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order (S.I. 2005/1791), {art. 2(a)}



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- F24** S. 28F(1)(b)(iv) and preceding word inserted (30.6.2005) by The Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order (S.I. 2005/1791), {art. 2(b)}  
**F25** 2004 asp 4.

## [<sup>F26</sup>28G Residual duty: supplementary provisions

- (1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications—
  - (a) references to a responsible body are to be read as references to an authority; and
  - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies—
  - (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require the authority to—
  - (a) remove or alter a physical feature; or
  - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.
- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) “Authority” means—
  - (a) in relation to England and Wales, a local education authority; and
  - (b) in relation to Scotland, an education authority.]

### Textual Amendments

- F26** S. 28G inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 16 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

*[<sup>F27</sup> Enforcement: England and Wales]*

### Textual Amendments

- F27** Pt. IV Ch. 1: Cross-heading and s. 28H inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 17(1) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

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## [<sup>F29</sup>28H [<sup>F28</sup>Tribunals]

(1) <sup>F30</sup> .....

[ In this Chapter—

<sup>F31</sup>(2) <sup>F32</sup> .....

“the Welsh Tribunal” means the Special Educational Needs Tribunal for Wales.

(3) In addition to the jurisdiction of [<sup>F33</sup>the Welsh Tribunal] under Part 4 of the Education Act 1996, [<sup>F34</sup>the Welsh Tribunal] is to exercise the jurisdiction conferred on it by this Chapter.]]

(3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.

(4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.

### Textual Amendments

**F28** S. 28H heading substituted (31.3.2003 for certain purposes otherwise 1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 8(2)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, arts. 5, 6, Sch. Pt. II, **III**

**F29** S. 28H inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 17(1) (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**

**F30** S. 28H(1) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 115(a)**

**F31** S. 28H(2)(3) substituted (31.3.2003 for certain purposes otherwise 1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 8(1)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, arts. 5, 6, Sch. Pt. II, **III**

**F32** S. 28H(2): definition of “the Tribunal” and the following word “and” omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order (S.I. 2008/2833), art. 6, {Sch. 3 para. 115(b)}

**F33** Words in s. 28H(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 115(c)(i)**

**F34** Words in s. 28H(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 115(c)(ii)**

### Modifications etc. (not altering text)

**C4** S. 28H: functions transferred (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **arts. 3, 4, 5**, {Sch. 1 Table 1} (with Sch. 4)

## [<sup>F35</sup>28I Jurisdiction and powers of the Tribunal

(1) A claim that a responsible body—

(a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or

(b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,

may be made to the [<sup>F36</sup>appropriate tribunal] by A’s parent.

(2) But this section does not apply to a claim to which section 28K or 28L applies.

(3) If the [<sup>F36</sup>appropriate tribunal] considers that a claim under subsection (1) is well founded—

(a) it may declare that A has been unlawfully discriminated against; and

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- (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)—
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
  - (b) does not include power to order the payment of any sum by way of compensation.
- [ Subject to regulations under section 28J(8), the appropriate tribunal—
- <sup>F37</sup>(5) (a) for a claim against the responsible body for a school in England, is the [<sup>F38</sup>First-tier Tribunal],
- (b) for a claim against the responsible body for a school in Wales, is the Welsh Tribunal.]]

#### Textual Amendments

- F35** S. 28I inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 18 (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F36** Words in s. 28I(1)(3) substituted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 9(2)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F37** S. 28I(5) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 9(3)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F38** Words in s. 28I(5)(a) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 116**

### 28IA Jurisdiction and powers of the Tribunal – Wales

- (1) A claim that a responsible body for a school in Wales—
  - (a) has discriminated against a person (“the relevant person”) in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against the relevant person in such a way,may be made to the Welsh Tribunal by that relevant person.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) The relevant person's right to claim is exercisable concurrently with the right of the relevant person's parent under section 28I.
- (4) If the Welsh Tribunal considers that a claim under subsection (1) is well founded—
  - (a) it may declare that the relevant person has been unlawfully discriminated against, and
  - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (5) The power conferred by subsection (4)(b)—
  - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates, but

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- (b) does not include power to order the payment of any sum by way of compensation.
- (6) The exercise of rights under this section is subject to provision made by regulations under sections 28IB and 28J.

### **28IB Case friends — Wales**

- (1) The Welsh Ministers may by regulations provide for—
  - (a) a disabled child in a local authority area in Wales to have a person to make representations on behalf of the disabled child with a view to avoiding or resolving disagreements about matters made unlawful under this chapter or to be treated as discrimination by virtue of section 58, and
  - (b) a relevant person (within the meaning of section 28IA) to have another person to exercise the relevant person's rights under that section on the relevant person's behalf.
- (2) A person exercising rights or making representations on behalf of a disabled child or a relevant person under subsection (1) is referred to in this Part as a “case friend”.
- (3) A case friend must—
  - (a) make representations and exercise rights fairly and competently;
  - (b) have no interest adverse to that of the disabled child or relevant person;
  - (c) ensure that all steps and decisions taken by the case friend are for the benefit of the disabled child or relevant person and take account of the disabled child or relevant person's views.
- (4) Regulations made under this section may (among other things)—
  - (a) confer functions on the Welsh Tribunal;
  - (b) make provision about procedures in relation to case friends;
  - (c) make provision about the appointment and removal of case friends;
  - (d) specify the circumstances in which a person may or may not act as a case friend;
  - (e) specify the circumstances in which a relevant person (within the meaning of section 28IA) must have a case friend;
  - (f) specify further requirements in respect of the conduct of case friends.
- (5) In this section, sections 28IC, 28ID and 28IE, a disabled child means any disabled person who is a pupil (or a prospective pupil) of—
  - (a) a maintained school or maintained nursery school,
  - (b) a pupil referral unit,
  - (c) an independent school, or
  - (d) a special school not maintained by a local authority.
- (6) In this section, sections 28IC, 28ID and 28IE “local authority” has the meaning given by section 579(1) of the Education Act 1996.

### **28IC Advice and information — Wales**

- (1) A local authority in Wales must arrange for any disabled child in their area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools.

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- (2) In making the arrangements, the authority must have regard to any guidance given by the Welsh Ministers.
- (3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (4) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
  - (a) disabled children in their area,
  - (b) parents of disabled children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.

### **28ID Resolution of disputes — Wales**

- (1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in their area about matters made unlawful under this chapter or to be treated as discrimination by virtue of section 58.
- (2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.
- (3) In making the arrangements, the authority must have regard to any guidance given by the Welsh Ministers.
- (4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (5) The authority must take such steps as they consider appropriate for making the arrangements under subsection (1) known to—
  - (a) disabled children in their area,
  - (b) parents of disabled children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of any person to make a claim to the Welsh Tribunal, and the authority must take such steps as they consider appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in their area.

### **28IE Independent advocacy services — Wales**

- (1) Every local authority in Wales must—
  - (a) make arrangements for the provision of independent advocacy services in their area;
  - (b) refer any disabled child in their area who requests independent advocacy services to a service provider;
  - (c) refer any person who is a case friend for a disabled child in their area and who requests independent advocacy services to a service provider.
- (2) In this section “independent advocacy services” are services providing advice and assistance (by way of representation or otherwise) to a disabled child who is—

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- (a) making, or intending to make a claim that a responsible body—
    - (i) has discriminated against that child in a way which is unlawful under this Chapter, or
    - (ii) is by virtue of section 58 to be treated as having discriminated against that child in such a way; or
  - (b) considering whether to make such a claim; or
  - (c) taking part in or intending to take part in dispute resolution arrangements made under section 28ID.
- (3) In making arrangements under this section, every local education authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—
- (a) the subject of a claim to the Welsh Tribunal, or
  - (b) involved in investigating or adjudicating on such a claim.
- (4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (5) Every local authority in Wales must take such steps as they consider appropriate for making the arrangements under this section known to—
- (a) disabled children in their area,
  - (b) parents of disabled children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.
- (6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.
- (7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.

### **[<sup>F39</sup>28J Procedure**

- (1) Regulations may [<sup>F40</sup>, with the agreement of the Welsh Ministers,] make provision about—
- (a) the proceedings of the [<sup>F41</sup>Welsh] Tribunal on a claim of unlawful discrimination under this Chapter; and
  - (b) the making of a claim [<sup>F42</sup>to the Welsh Tribunal].
- (2) The regulations may, in particular, include provision—
- (a) as to the manner in which a claim must be made;
  - (b) if the jurisdiction of the [<sup>F43</sup>Welsh] Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any claim is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
  - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
  - (e) as to the persons who may appear on behalf of the parties;

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- (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
- (g) requiring persons to attend to give evidence and produce documents;
- (h) for authorising the administration of oaths to witnesses;
- (i) for the determination of claims without a hearing in prescribed circumstances;
- (j) as to the withdrawal of claims;
- (k) for enabling the [<sup>F43</sup>Welsh] Tribunal to stay proceedings on a claim;
- (l) for the award of costs or expenses;
- (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
- (n) for the registration and proof of decisions and orders; and
- (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.

(2A) <sup>F44</sup> .....

- (3) Proceedings before [<sup>F45F46</sup>... the Welsh Tribunal] are to be held in private, except in prescribed circumstances.

<sup>F47</sup>(4) .....

- (5) The Secretary of State may [<sup>F48</sup>, with the agreement of the Welsh Ministers,] pay such allowances for the purpose of or in connection with the attendance of persons at [<sup>F45F49</sup>... the Welsh Tribunal] as he may, with the consent of the Treasury, determine.

(6) <sup>F50</sup> .....

- (7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before [<sup>F45F51</sup>... the Welsh Tribunal] but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.

- (8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996 [<sup>F52</sup>, including provision—

- (a) for determining the appropriate tribunal for the purposes of section 28I for such a claim, and
- (b) for the transfer of proceedings between the [<sup>F53</sup>First-tier Tribunal] and the Welsh Tribunal.]

- (9) A person who without reasonable excuse fails to comply with—

- (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
  - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),
- is guilty of an offence.

[ A person who without reasonable excuse fails to comply with a requirement which—

- <sup>F54</sup>(9A) (a) is imposed by Tribunal Procedure Rules in relation to claims of unlawful discrimination under this Chapter made to the First-tier Tribunal, and
  - (b) corresponds to a requirement mentioned in subsection (9)(a) or (b),
- is guilty of an offence.]

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- (10) A person guilty of an offence under subsection (9) [<sup>F55</sup>or (9A)] is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.]

#### Textual Amendments

- F39** S. 28J inserted (E.W.S.) (1.7.2002 for certain purposes otherwise 1.9.2002) by 2001 c. 10, s. 19(1) (with s. 43(13)); S.I. 2002/1721, art. 3, **Sch. Pt. I**; S.I. 2002/2217, art. 3, **Sch. 1 Pt. I**
- F40** Words in S. 28J(1) inserted (3.11.2008) by The Transfer of Tribunal Functions Order (S.I. 2008/2833), art. 9(1), {Sch. 3 para. 117(a)(i)}
- F41** Word in S. 28J(1)(a) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(a)(ii)**
- F42** Words in S. 28J(1)(b) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(a)(iii)**
- F43** Word in S. 28J(2)(b)(k) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(b)**
- F44** S. 28J(2A) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(c)**
- F45** Words in s. 28J(3)(5)(7) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(3)(5)(7)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F46** Words in S. 28J(3) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(d)**
- F47** S. 28J(4) repealed (1.9.2003) by 2002 c. 32, ss. 195, 215(2), Sch. 18 para. 10(4), **Sch. 22 Pt. II** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F48** Words in S. 28J(5) inserted (3.11.2008) by The Transfer of Tribunal Functions Order (S.I. 2008/2833), art. 9(1), {Sch. 3 para. 117(e)(i)}
- F49** Words in S. 28J(5) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(e)(ii)**
- F50** S. 28J(6) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(f)**
- F51** Words in S. 28J(7) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(g)**
- F52** S. 28J(8)(a)(b) and the preceding words inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(8)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F53** Words in S. 28J(8)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(h)**
- F54** S. 28J(9A) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(i)**
- F55** Words in S. 28J(10) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 9(1), **Sch. 3 para. 117(j)**

#### [<sup>F56</sup>28JA] Appeal from the Welsh Tribunal to the Upper Tribunal

- (1) A party to any proceedings under this Chapter before the Welsh Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Welsh Tribunal in those proceedings.
- (2) An appeal may be brought under subsection (1) only if, on an application made by the party concerned, the Welsh Tribunal or the Upper Tribunal has given its permission for the appeal to be brought.



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- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Welsh Tribunal.]

#### Textual Amendments

**F56** S. 28JA inserted (E.W.S.) (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), **Sch. 3 para. 118**

### [<sup>F57</sup>28K Admissions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- (a) under section 94 of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for [<sup>F58</sup>an Academy] and the Secretary of State under section 482 of the Education Act 1996,
- enabling an appeal to be made against the decision by A’s parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Admissions decision” means—
- (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
  - (b) a decision as to the admission of a person to [<sup>F58</sup>an Academy] taken by the responsible body or on its behalf.]

#### Textual Amendments

**F57** S. 28K inserted (E.W.S.) (1.9.2002) by [2001 c. 10, s. 20](#) (with s. 43(13)); [S.I. 2002/2217](#), art. 3, **Sch. 1 Pt. 1**

**F58** Words in s. 28K(2)(b)(5)(b) substituted (26.7.2002) by [2002 c. 32, s. 65, Sch. 7 para. 5\(3\)](#) (with ss. 210(8), 214(4)); [S.I. 2002/2002](#), **art. 2**

### [<sup>F59</sup>28L Exclusions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or

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- (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- (a) under [F60 section 52(3)(c) of the Education Act 2002], or
  - (b) under an agreement entered into between the responsible body for [F61 an Academy] and the Secretary of State under section 482 of the Education Act 1996,
- enabling an appeal to be made against the decision by A or by his parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Exclusion decision” means—
- (a) a decision of a kind mentioned in [F62 section 52(3)(c) of the Education Act 2002];
  - (b) a decision not to reinstate a pupil who has been permanently excluded from [F61 an Academy] by its head teacher, taken by the responsible body or on its behalf.
- (6) “Responsible body”, in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under [F63 section 19 of the Education Act 2002].
- (7) “Maintained school” has the meaning given in section 28Q(5).]

#### Textual Amendments

**F59** S. 28L inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 21 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**F60** Words in s. 28L(2)(a)(5)(a) substituted (20.1.2003 for E. and 9.1.2004 in relation to W. by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(2) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/2961, art. 7, Sch. Pt. 4

**F61** Words in s. 28L(2)(b)(5)(b) substituted (26.7.2002) by 2002 c. 32, s. 65, Sch. 7 para. 5(4) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 2

**F62** Words in s. 28L(2)(a)(5)(a) substituted (20.1.2003 for E. and 1.9.2004 in relation to W. by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(2) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/2961, art. 7, Sch. Pt. 4

**F63** Words in s. 28L(6) substituted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(3) (with ss. 210(8), 214(4); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

#### [F64 28M Roles of the Secretary of State and the [F65 Welsh Ministers]

- (1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or
  - (b) has failed to discharge a duty imposed by or under either of those sections,

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it may give that body such directions as to the discharge of the duty as appear to it to be expedient.

- (2) Subsection (3) applies in relation to—
- (a) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the [<sup>F66</sup>Welsh Ministers], under section 342 of the Education Act 1996; and
  - (b) city academies.
- (3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to—
    - (i) the provision to the appropriate authority of copies of that body’s accessibility plan, or
    - (ii) the inspection of that plan, or
  - (b) has failed to discharge that duty,
- it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.
- (5) Subsection (6) applies if the [<sup>F67</sup>First-tier Tribunal][<sup>F68</sup> or the Welsh Tribunal] has made an order under section 28I(3).
- (6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
  - (b) has failed to comply with the order,
- he may give that body such directions as to compliance with the order as appear to him to be expedient.
- (7) Directions given under subsection (1), (3) or (6)—
- (a) may be varied or revoked by the directing authority; and
  - (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.
- (8) “Appropriate authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the [<sup>F69</sup>Welsh Ministers].
- (9) “Directing authority” means—
- (a) the Secretary of State in relation to a direction given by him; and
  - (b) the [<sup>F70</sup>Welsh Ministers] in relation to a direction given by [<sup>F70</sup> them].]

#### Textual Amendments

**F64** S. 28M inserted (E.W.S.) (1.9.2002 for certain purposes and 8.10.2003 in so far as not already in force) by 2001 c. 10, ss. 22, 43(3) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1; S.I. 2003/2532, art. 2, Sch.

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- F65** S. 28M: words in heading substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1, 3, [Sch. 1 para. 54\(2\)](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F66** Words in s. 28M(2)(a) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1, 3, [Sch. 1 para. 54\(3\)](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F67** Words in s. 28M(5) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 119](#)
- F68** Words in s. 28M(5) inserted (1.9.2003) by 2002 c. 32, s. 195, [Sch. 18 para. 11](#) (with ss. 210(8), 214(4), [Sch. 18 para. 17](#)); S.I. 2002/3185, art. 6, [Sch. Pt. III](#)
- F69** Words in s. 28M(8)(b) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1, 3, [Sch. 1 para. 54\(4\)](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F70** Words in s. 28M(9)(b) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1, 3, [Sch. 1 para. 54\(5\)](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.

### *[<sup>F71</sup>Enforcement: Scotland]*

#### **Textual Amendments**

- F71** [Pt. IV Ch. 1](#): Cross-heading and s. 28N inserted (1.9.2002) by 2001 c. 10, s. 23 (with s. 43(13)); S.I. 2002/2217, art. 3, [Sch. 1 Pt. 1](#)

### **[<sup>F72</sup>28N Civil proceedings**

- (1) A claim that a responsible body in Scotland—
  - (a) has discriminated against a person in a way which is unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person in such a way,
 may be made the subject of civil proceedings in the same way as any other claim for the enforcement of a statutory duty.
- (2) Proceedings in Scotland may be brought only in a sheriff court.
- (3) The remedies available in such proceedings are those which are available in the Court of Session other than an award of damages.
- (4) Part 3 of Schedule 3 makes further provision about the enforcement of this Chapter and about procedure.
- (5) In relation to civil proceedings in Scotland, in [<sup>F73</sup>paragraph 10] of that Schedule—

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (a) references to [<sup>F74</sup>section 28I] are to be construed as a reference to this section;
- (b) references to [<sup>F75</sup>First-tier Tribunal][<sup>F76</sup>or Welsh Tribunal] are to be construed as references to the sheriff court.]

#### Textual Amendments

- F72** S. 28N inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 23 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F73** Words in s. 28N(5) substituted (30.6.2005) by Disability Discrimination Act 2005 (c. 13), ss. 19(1), 20(3)-(6), Sch. 1 para. 24(3)(a); S.I. 2005/1676, art. 2(1)(c)
- F74** Words in s. 28N(5)(a) substituted (30.6.2005) by Disability Discrimination Act 2005 (c. 13), ss. 19(1), 20(3)-(6), Sch. 1 para. 24(3)(b); S.I. 2005/1676, art. 2(1)(c)
- F75** Words in s. 28N(5)(b) substituted (3.11.2008) by The Transfer of Tribunal Functions Order (S.I. 2008/2833), art. 9(1), {Sch. 3 para. 120}
- F76** Words in s. 28N(5)(b) inserted (30.6.2005) by Disability Discrimination Act 2005 (c. 13), ss. 19(1), 20(3)-(6), Sch. 1 para. 24(3)(c); S.I. 2005/1676, art. 2(1)(c)

*[<sup>F77</sup>Agreements relating to enforcement]*

#### Textual Amendments

- F77** Pt. IV Ch. 1: Cross-heading and s. 28P inserted (1.9.2002) by 2001 c. 10, s. 24 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### [<sup>F78</sup>28P Validity and revision of agreements of responsible bodies

- (1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—
  - (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person from making a claim under this Chapter.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim—
  - (a) under section 28I or 28N; or
  - (b) to which section 28K or 28L applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order may be made unless all persons affected have been—
  - (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.]

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

### Textual Amendments

**F78** S. 28P inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 24 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### [<sup>F79</sup>Interpretation of Chapter 1]

### Textual Amendments

**F79** Pt. IV Ch. 1: Cross-heading and s. 28Q inserted (1.9.2002) by 2001 c. 10, s. 25 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### [<sup>F80</sup>28Q Interpretation

- (1) This section applies for the purpose of interpreting this Chapter.
- (2) “Disabled pupil” means a pupil who is a disabled person.
- (3) “Pupil”—
  - (a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (4) Except in relation to Scotland (when it has the meaning given in section 135(1) of the Education (Scotland) Act 1980) “school” means—
  - (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an independent school;
  - (d) a special school which is not a maintained special school but which is approved by the Secretary of State, or by the [<sup>F81</sup>Welsh Ministers], under section 342 of the Education Act 1996;
  - (e) a pupil referral unit.
- (5) In subsection (4)—
 

“maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

“maintained nursery school” has the meaning given in section 22(9) of the School Standards and Framework Act 1998;

“independent school” has the meaning given in section 463 of the Education Act 1996; and

“pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996.
- (6) “Responsible body” has the meaning given in section 28A(5).
- (7) “Governing body”, in relation to a maintained school, means the body corporate (constituted in accordance with [<sup>F82</sup>regulations under section 19 of the Education Act 2002]) which the school has as a result of [<sup>F83</sup>that section].
- (8) “Parent”—

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- (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) In relation to England and Wales “permitted form of selection” means—
- (a) if the school is a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, any form of selection mentioned in section 99(2) or (4) of that Act;
  - (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
  - (c) if the school is an independent school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (10) In relation to Scotland, “permitted form of selection” means—
- (a) if the school is managed by an education authority, such arrangements as have been approved by the Scottish Ministers for the selection of pupils for admission;
  - (b) if the school is an independent school or a self-governing school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (11) In subsection (10), “education authority”, “independent school” and “self-governing school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (12) <sup>F84</sup> .....
- (13) “Accessibility strategy” and “accessibility plan” have the meaning given in section 28D.
- (14) <sup>F85</sup> .....

#### Textual Amendments

- F80** S. 28Q inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 25 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F81** Words in s. 28Q(4)(d) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order (S.I. 2007/1388), arts. 1, 3, {Sch. 1 para. 55(2)}, the amending provision coming into force immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F82** Words in s. 28Q(7) substituted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 28(a) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F83** Words in s. 28Q(7) substituted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 28(a) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- F84** S. 28Q(12) ceased to have effect (26.7.2002) and repealed (26.7.2002 for E.S and 1.8.2003 for W.) by 2002 c. 32, s. 65, 215(2), 216, Sch. 7 para. 5(5), Sch. 22 Pt. III (with ss. 210(8), 214(4)); S.I. 2002/2002, arts. 2, 3; S.I. 2003/1718, **art. 4**, Sch. Pt. I
- F85** S. 28Q(14) omitted by virtue of The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1, 3, **Sch. 1 para. 55(3)**, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.

## [<sup>F86</sup>CHAPTER 2

### FURTHER AND HIGHER EDUCATION]

#### Textual Amendments

- F86** Pt. IV Ch. 2: Chapter heading, cross-heading and s. 28R inserted (E.W.S) (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, **art. 3**; S.I. 2002/2217, **art. 3**, **Sch. 1 Pt. 1**

#### [<sup>F87</sup>Duties of responsible bodies]

#### Textual Amendments

- F87** Pt. IV Ch. 2: Cross-heading and s. 28R inserted (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, **art. 3**; S.I. 2002/2217, **art. 3**, **Sch. 1 Pt. 1**

### [<sup>F88</sup>28R Discrimination against disabled students and prospective students

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—
  - (a) in the arrangements it makes for determining admissions to the institution;
  - (b) in the terms on which it offers to admit him to the institution; or
  - (c) by refusing or deliberately omitting to accept an application for his admission to the institution.
- (2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.
- (3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.

[ It is unlawful for the body responsible for an educational institution to discriminate <sup>F89</sup>(3A) against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
- (b) in the terms on which it is prepared to confer a qualification on him;



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*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

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- (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
  - (d) by withdrawing a qualification from him or varying the terms on which he holds it.
- (3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—
- (a) holds or applies for a qualification conferred by the institution;
  - (b) is a student at the institution; or
  - (c) seeks admission as a student to the institution.]
- (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) “Educational institution”, in relation to England and Wales, means an institution—
- (a) within the higher education sector;
  - (b) within the further education sector; or
  - (c) designated in an order made by the Secretary of State.
- (7) “Educational institution”, in relation to Scotland, means—
- (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
  - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
  - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
  - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
  - (e) an institution designated in an order made by the Secretary of State.
- (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
- (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
- (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
- (11) “Student services” means services of any description which are provided wholly or mainly for students.
- (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.]

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

### Textual Amendments

- F88** S. 28R inserted (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, art. 3; S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F89** S. 28R(3A)(3B) inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 5

### [<sup>F90</sup>28S Meaning of “discrimination”

- (1) For the purposes of [<sup>F91</sup>this Chapter], a responsible body discriminates against a disabled person if—
  - (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- [<sup>F92</sup>(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 28T or 28UA(5) in relation to the disabled person.]
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—
  - (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
  - (b) that its failure to take the step was attributable to that lack of knowledge.
- (4) [<sup>F93</sup>.....]
- [<sup>F94</sup>(5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
  - (a) the standard is, or would be, applied equally to persons who do not have his particular disability, and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (7) If in a case falling within subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.
- (8) Subject to subsection (9), regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.
- (9) Treatment of a disabled person by a responsible body cannot be justified under subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (10).

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.
- (11) In this section and section 28T, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.]]

#### Textual Amendments

- F90** S. 28S inserted (1.9.2002) by 2001 c. 10, s. 27 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F91** Words in s. 28S(1) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 6(1)
- F92** S. 28S(2) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 6(2)
- F93** S. 28S(4) omitted (30.6.2006 for certain purposes and otherwise 1.9.2006) by virtue of The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 6(3)
- F94** S. 28S(5)-(11) substituted for s. 28S(5)-(9) (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations (S.I. 2006/1721), regs. 1, {6(4)}

#### [<sup>F95</sup>28SA Meaning of “harassment“

- (1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that body engages in unwanted conduct which has the purpose or effect of—
- violating the disabled person's dignity, or
  - creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.]

#### Textual Amendments

- F95** S. 28SA inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 7

#### [<sup>F96</sup>[<sup>F97</sup>28 Responsible bodies' duties to make adjustments

- (1) Where—

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice relating to—
  - (i) the arrangements it makes for determining admissions to the institution, or
  - (ii) student services provided for, or offered to, students by the responsible body, and
- (c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,
- (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
- (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in subsection (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
  - (i) holds a qualification conferred by the responsible body, or
  - (ii) applies for a qualification which the responsible body confers,
 at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

(1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—

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- (a) applies for a qualification which that body confers, or
- (b) holds a qualification which was conferred by that body,
- at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.]
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under [<sup>F98</sup>any of subsections (1) to (1D)], a responsible body must have regard to any relevant provisions of a code of practice issued under [<sup>F99</sup>section 14 of the Equality Act 2006.]
- (3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.
- (4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under [<sup>F100</sup>any of subsections (1) to (1D)], regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.
- (6) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.]

#### Textual Amendments

- F96** S. 28T inserted (1.9.2002) by 2001 c. 10, s. 28 (with s. 43(13)); S.I. 2002/2217, arts. 5, 6
- F97** S. 28T(1)(1A)-(1D) and section heading substituted for s. 28T(1) and section heading (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 8
- F98** Words in s. 28T(2) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 9
- F99** Words in s. 28T(2) substituted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 46 (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)
- F100** Words in s. 28T(4) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 9

#### Modifications etc. (not altering text)

- C5** S. 28T: Functions of a local education authority made exercisable by authorised persons (E.) (1.4.2002) by S.I. 2002/928, art. 3, Sch. 3 para. (s)
- C6** S. 28T(1) applied (with modifications) (temp. from 28.8.2002) by S.I. 2002/2217, art. 6, Sch. 2

*[<sup>F101</sup>Other providers of further education or training facilities]*

#### Textual Amendments

- F101** Pt. IV Ch. 2: Cross-heading and s. 28U inserted (1.9.2002) by 2001 c. 10, s. 29 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

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*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

## **[<sup>F102</sup>28U Further education etc. provided by local education authorities and schools**

- (1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to higher and further education secured by a local education authority.
- (2) Part 1A of that Schedule modifies this Chapter for the purpose of its application in relation to recreational or training facilities secured by a local education authority and further education provided by the governing body of a maintained school.
- (3) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980.
- (4) Part 2A of that Schedule modifies this Chapter for the purpose of its application in relation to facilities whose provision is secured by an education authority under section 1(3) of the Education (Scotland) Act 1980.]

### **Textual Amendments**

**F102** S. 28U substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, **10**

### *[<sup>F103</sup>Other unlawful acts]*

### **Textual Amendments**

**F103** Cross-heading inserted after s. 28U (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, **11**

## **[<sup>F104</sup>28UA Relationships which have come to an end**

- (1) This section applies where—
  - (a) there has been a relevant relationship between a disabled person and a responsible body, and
  - (b) that relationship has come to an end.
- (2) In this section a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.
- (3) It is unlawful for the responsible body—
  - (a) to discriminate against the disabled person by subjecting him to a detriment, or
  - (b) to subject the disabled person to harassment,
 where the discrimination or harassment arises out of and is closely connected to the relevant relationship.
- (4) This subsection applies where—

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- (a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or
  - (b) a physical feature of premises which are occupied by the responsible body, places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.
- (5) Where subsection (4) applies, it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (6) Subsection (5) imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (7) Nothing in subsection (5) imposes any duty on the responsible body if it does not know and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that subsection.
- (8) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.]

#### Textual Amendments

**F104** S. 28UA inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, 12

#### [<sup>F105</sup>28UB] Instructions and pressure to discriminate

- (1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.
- (2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by —
  - (a) providing or offering to provide that person with any benefit, or
  - (b) subjecting or threatening to subject that person to any detriment.
- (3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.]

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

#### Textual Amendments

**F105** S. 28UB inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), [regs. 1, 13](#)

### [<sup>F106</sup>28U] Discriminatory advertisements

- (1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—
  - (a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and
  - (b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—
    - (i) the applicant not having any disability, or any particular disability, or
    - (ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by section 28T.
- (2) Subsection (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.
- (3) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.]

#### Textual Amendments

**F106** S. 28UC inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), [regs. 1, 14](#)

*[<sup>F107</sup>Enforcement, etc.]*

#### Textual Amendments

**F107** Pt. IV Ch. 2: Cross-heading and s. 28V inserted (1.9.2002) by [2001 c. 10, s. 30](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), [art. 3](#), [Sch. 1 Pt. 1](#)

### [<sup>F108</sup>28V] Enforcement, remedies and procedure

- (1) A claim by a person—
  - (a) that a responsible body has discriminated against him [<sup>F109</sup>, or subjected him to harassment,] in a way which is unlawful under this Chapter,



*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (b) that a responsible body is by virtue of section 57 or 58 to be treated as having [<sup>F110</sup>done so], or
  - (c) that a person is by virtue of section 57 to be treated as having [<sup>F110</sup>done so],
- may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

[ Where—

- <sup>F111</sup>(1A) (a) a claim is brought under subsection (1), and
- (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,
- the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.]

- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales may be brought only in a county court.
- (4) Proceedings in Scotland may be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
- (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.]

#### Textual Amendments

- F108** S. 28V inserted (1.9.2002) by 2001 c. 10, s. 30 (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F109** Words in s. 28V(1)(a) inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, **15(2)(a)**
- F110** Words in s. 28V(1)(b)(c) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, **15(2)(b)**
- F111** S. 28V(1A) inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, **15(3)** (with reg. 3)

#### <sup>F112</sup>28W Occupation of premises by educational institutions

- (1) This section applies if—
  - (a) premises are occupied by an educational institution under a lease;
  - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and

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- (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T [<sup>F113</sup>or section 28UA(5)].
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—
- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—
- “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and
- “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—
- (a) impose conditions which are to apply if the responsible body alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the responsible body’s altering the premises,
- the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Part 3 of Schedule 4 supplements the provisions of this section.]

#### **Textual Amendments**

**F112** S. 28W inserted (E.W.S.) (30.5.2002) by 2001 c. 10, s. 31 (with s. 43(13)); S.I. 2002/1649, art. 3

**F113** Words in s. 28W(1)(c) inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 16

#### **Modifications etc. (not altering text)**

**C7** S. 28W modified (28.6.2002) by S.I. 2002/1458, reg. 7 (which Regulations were revoked (1.5.2005) by S.I. 2005/1070, reg. 8)

**C8** S. 28W modified (1.5.2005) by The Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2005 (S.I. 2005/1070), reg. 7

### [<sup>F114</sup>**28X Validity and revision of agreements**

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”.]

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

**Textual Amendments**

**F114** S. 28X inserted (1.9.2002) by 2001 c. 10, s. 32 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**29 Education of disabled persons.**

**F115** .....

**Extent Information**

**E1** In the application of the Act to Northern Ireland, this section is omitted; see s. 70(6), Sch. 8 paras. 1, 15

**Textual Amendments**

**F115** S. 29 repealed (E.W.S.) (1.9.2002) by 2001 c. 10, s. 40(1), Sch. 9 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

*[<sup>F116</sup>Duties of funding councils]*

**Textual Amendments**

**F116** Pt. IV Ch. 2: Cross-heading inserted before s. 30 (E.W.S.) (1.9.2002) by 2001 c. 10, s. 34(4) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**30 Further and higher education of disabled persons. 1992 c.13.**

(1) The Further and Higher Education Act 1992 is amended as set out in subsections (2) to (6).

<sup>F117</sup>(2) .....

<sup>F117</sup>(3) .....

<sup>F117</sup>(4) .....

(5) In section 62 (establishment of higher education funding councils), after subsection (7) insert—

“(7A) In exercising their functions, each council shall have regard to the requirements of disabled persons.

(7B) In subsection (7A) “disabled persons” means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.”

[<sup>F118</sup>(6) In section 65 (administration of funds by higher education funding councils), after subsection (4) insert—

“(4A) Without prejudice to the power to impose conditions given by subsection (3) above, the conditions subject to which a council makes grants, loans or other payments under this section to the governing body of a higher education institution shall require the governing body to publish disability statements at such intervals as may be specified.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

(4B) For the purposes of subsection (4A) above—

“disability statement” means a statement containing information of a specified description about the provision of facilities for education and research made by the institution in respect of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995; and

“specified” means specified in the conditions subject to which grants, loans or other payments are made by a council under this section.”]

F119(7) .....

F119(8) .....

F119(9) .....

#### **Extent Information**

**E2** In the application of the Act to Northern Ireland, this section is omitted; see [s. 70\(6\)](#), [Sch. 8 paras. 1, 15](#)

#### **Textual Amendments**

**F117** [S. 30\(2\)-\(4\)](#) repealed (1.4.2001) by [2000 c. 21, s. 153](#), [Sch. 11](#) (with [s. 150](#)); [S.I. 2001/654, art. 2\(2\)](#), [Sch. Pt. II](#) (with savings and transitional provisions in [art. 3](#)); [S.I. 2001/1274, art. 2\(1\)](#), [Sch. Pt. I](#)

**F118** [S. 30\(6\)](#) repealed (E.W.S) (1.9.2002) by [2001 c. 10, ss. 34\(5\), 42\(6\)](#), [Sch. 9](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217, art. 3](#), [Sch. 1 Pt. 1](#)

**F119** [S. 30\(7\)-\(9\)](#) repealed (1.11.1996) by [1996 c. 56, ss. 582\(2\), 583\(2\)](#), [Sch. 38 Pt. I](#) (with [ss. 1\(4\), 561, 562, Sch. 39](#))

#### **Commencement Information**

**II** [S. 30\(1\)-\(6\)](#) in force at 31.7.1996 by [S.I. 1996/1474, art. 2\(2\)](#), [Sch. Pt. II](#)

### **31 Further and higher education of disabled persons: Scotland. 1992 c. 37.**

(1) The Further and Higher Education (Scotland) Act 1992 is amended as follows.

(2) In section 37 (establishment of Scottish Higher Education Funding Council) after subsection (4) insert—

“(4A) In exercising their functions, the Council shall have regard to the requirements of disabled persons.

(4B) In subsection (4A) above, “disabled persons” means persons who are disabled persons for the purpose of the Disability Discrimination Act 1995.”

[<sup>F120</sup>(3) In section 40 (administration of funds by the Council), after subsection (4) insert—

“(5) Without prejudice to the power to impose conditions given by subsection (3) above, the conditions subject to which the Council make grants, loans or other payments under this section to the governing body of an institution within the higher education sector shall require the governing body to publish disability statements at such intervals as may be specified.

(6) For the purposes of subsection (5) above—

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

“disability statement” means a statement containing information of a specified description about the provision of facilities for education and research made by the institution in respect of persons who are disabled persons for the purpose of the Disability Discrimination Act 1995; and

“specified” means specified in the conditions subject to which grants, loans or other payments are made by the Council under this section.”]

#### Extent Information

**E3** In the application of the Act to Northern Ireland, this section is omitted; see s. 70(6), Sch. 8 paras. 1, 15

#### Textual Amendments

**F120** S. 31(3) repealed (E.W.S.) (1.9.2002) by 2001 c. 10, ss. 34(6), 42(6), Sch. 9 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### *[<sup>F121</sup> Interpretation of Chapter 2]*

#### Textual Amendments

**F121** Pt. IV Ch. 2: Cross-heading and s. 31A inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 33 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### **[<sup>F122</sup> 31A Interpretation**

- (1) Subsections (2) to [<sup>F123</sup>(10)] apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.
- <sup>F124</sup>(5) [ “Provision, criterion or practice“ includes any arrangements.
- (6) “Qualification“ means any authorisation, qualification, approval or certification conferred by a responsible body.
- (7) “Discriminate, “discrimination” and other related expressions are to be construed in accordance with section 28S.
- (8) “Harassment” is to be construed in accordance with section 28SA.
- (9) References (however expressed) to the conferment of a qualification on a person by a responsible body include—
  - (i) the renewal or extension of a qualification, and
  - (ii) the authentication of a qualification awarded to him by another person.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (10) “Physical feature“, in relation to any premises, includes any of the following (whether permanent or temporary)—
- (a) any feature arising from the design or construction of a building on the premises,
  - (b) any feature on the premises of any approach to, exit from or access to such a building,
  - (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises, and
  - (d) any other physical element or quality of any land comprised in the premises.]]

#### Textual Amendments

- F122** S. 31A and cross-heading inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 33 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F123** Word in s. 31A(1) substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 17
- F124** S. 31A(5)-(10) inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 17

## [<sup>F125</sup>CHAPTER 2A

### GENERAL QUALIFICATIONS BODIES

#### Textual Amendments

- F125** Pt. 4 Ch. 2A (ss. 31AA-31AF) inserted (E.W.S) (11.6.2007 for ss. 31AA, 31AD and 31AE for certain purposes, and for s. 31AF, otherwise in force for all provisions at 1.9.2007) by Disability Discrimination Act 2005 (c. 13), ss. 15, 20(3)-(6); S.I 2007/1555, arts. 2, 3(a)

### 31AA General qualifications bodies: discrimination and harassment

- (1) It is unlawful for a general qualifications body to discriminate against a disabled person—
- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a relevant qualification;
  - (b) in the terms on which it is prepared to confer a relevant qualification on him;
  - (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
  - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

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*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

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- (4) In this section and section 31AD, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.
- (5) But an authorisation, qualification, approval or certification may not be prescribed under subsection (4) if it is a professional or trade qualification (within the meaning given by section 14A(5)).
- (6) In this Chapter—
  - (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include—
    - (i) a responsible body (within the meaning of Chapter 1 or 2 of this Part),
    - (ii) a local education authority in England or Wales,
    - (iii) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980), or
    - (iv) an authority or body of a prescribed description or in prescribed circumstances;
  - (b) references (however expressed) to the conferment of a qualification on a person include—
    - (i) the renewal or extension of a qualification, and
    - (ii) the authentication of a qualification awarded to him by another person.

### **31AB Meaning of “discrimination”**

- (1) For the purposes of section 31AA, a body discriminates against a disabled person if—
  - (a) for a reason which relates to the disabled person’s disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 31AA, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 31AD in relation to the disabled person.
- (3) Treatment, other than the application of a competence standard, is (subject to subsections (5) to (7)) justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) The application by a body of a competence standard to a disabled person is (subject to subsections (6) and (7)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
  - (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (5) If, in a case falling within subsection (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under section 31AD in relation to the disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (3) unless it would have been justified even if the body had complied with that duty.

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*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

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- (6) Regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified (but see subsection (7)).
- (7) Treatment of a disabled person cannot be justified under subsection (3), (4) or (6) if it amounts to direct discrimination falling within subsection (8).
- (8) A body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.
- (9) In this section, "competence standard" means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

### **31AC Meaning of "harassment"**

- (1) For the purposes of section 31AA, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the body engages in unwanted conduct which has the purpose or effect of—
  - (a) violating the disabled person's dignity; or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

### **31AD General qualifications bodies: duty to make adjustments**

- (1) Where—
  - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice for determining on whom a relevant qualification is to be conferred,
  - (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
  - (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

- (2) Where—
  - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and
  - (c) it places a disabled person who—



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*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

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- (i) holds a relevant qualification conferred by the body, or
  - (ii) applies for a relevant qualification which the body confers,at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.
- (3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—
  - (a) holds a relevant qualification conferred by the body, or
  - (b) applies for a relevant qualification which the body confers,at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.
- (4) Nothing in subsection (1), (2) or (3) imposes a duty on a general qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—
  - (a) in the case of an applicant or potential applicant for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that subsection.
- (5) In this section—
  - (a) “provision, criterion or practice” includes (subject to any provision under subsection (6)(e)) any arrangements;
  - (b) “competence standard” has the meaning given by section 31AB(9).
- (6) Regulations may make provision, for purposes of this section—
  - (a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in subsection (1)(d) or (2)(c);
  - (b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in subsection (3);
  - (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body to have to take steps of a prescribed description;
  - (d) as to steps which it is always, or as to steps which it is never, reasonable for a body to have to take;
  - (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;
  - (f) as to things which are, or as to things which are not, to be treated as physical features.
- (7) This section imposes duties only for the purpose of determining whether a body has, for the purposes of section 31AA, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

## [<sup>F126</sup>31ADA] **Enforcement, remedies and procedures**

- (1) (1) A claim by a person—
- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,
  - (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so, or
  - (c) that a person is by virtue of section 57 to be treated as having done so,
- may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) Where—
- (a) a claim is brought under subsection (1), and
  - (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,
- the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.
- (3) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (4) Proceedings in England and Wales may be brought only in a county court.
- (5) Proceedings in Scotland may be brought only in a sheriff court.
- (6) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (7) Part 5 of Schedule 3 makes further provision about the enforcement of this Part and about procedure and evidence.]

### **Textual Amendments**

**F126** S. 31ADA inserted (1.9.2007) by [The Disability Discrimination Act 1995 \(Amendment etc.\) \(General Qualifications Bodies\) \(Alteration of Premises and Enforcement\) Regulations 2007 \(S.I. 2007/2405\)](#), [regs. 1\(2\), 3](#)

## [<sup>F127</sup>31AD] **Alterations to premises occupied under leases**

- (1) (1) This section applies where—
- (a) a general qualifications body occupies premises under a lease;
  - (b) but for this section, the general qualifications body would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the general qualifications body proposes to make in order to comply with the duty imposed by section 31AD(3).
- (2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

- (a) for the general qualifications body to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the general qualifications body to have to make a written application to the lessor for consent if it wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section and in Part 4 of Schedule 4—“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; “sub-lease” means any sub-term created out of, or deriving from, a leasehold interest; and “sub-tenancy” means any tenancy created out of, or deriving from, a superior tenancy.
- (4) For the purposes of subsection (1), the general qualifications body is to be treated as not being entitled to make the alteration, if the terms and conditions of the lease—
- (a) impose conditions which are to apply if the general qualifications body alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the general qualifications body's altering the premises.
- (5) Part 4 of Schedule 4 supplements the provisions of this section.]

#### **Textual Amendments**

**F127** S. 31ADB inserted (1.9.2007) by [The Disability Discrimination Act 1995 \(Amendment etc.\) \(General Qualifications Bodies\) \(Alteration of Premises and Enforcement\) Regulations 2007 \(S.I. 2007/2405\)](#), [regs. 1\(2\), 5](#) (with [regs. 8-13](#))

### **31AE Chapter 2A: claims, leased premises and certain agreements**

- (1) Regulations may make provision for, or in connection with, the making of a claim by a person—
  - (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;
  - (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so; or
  - (c) that a person is by virtue of section 57 to be treated as having done so.
- (2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—
  - (a) make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by section 31AD;
  - (b) make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.
- (3) Any term in a contract or other agreement made by or on behalf of a general qualifications body is void so far as it purports to—

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*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

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- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person making a claim of a kind mentioned in subsection (1).
- (4) Regulations may—
- (a) make provision for subsection (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in subsection (1);
  - (b) make provision modifying an agreement to which subsection (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that subsection.
- (5) The provision that may be made under subsection (1), (2) or (4) includes (in particular)
- - (a) provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;
  - (b) provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;
  - (c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;
  - (d) provision as to remedies;
  - (e) provision as to procedure;
  - (f) provision as to appeals;
  - (g) provision as to time limits;
  - (h) provision as to evidence;
  - (i) provision as to costs or expenses.
- (6) Provision under subsection (1), (2) or (4) may take the form of amendments of this Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this section.
- (8) Except as provided in regulations under subsection (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Subsection (8) does not prevent the making of an application for judicial review.

### **31AF Chapter 2A: duty to consult before making regulations**

- (1) Before making regulations under this Chapter, the Secretary of State shall consult such persons as it appears to him to be appropriate to consult, having regard to the substance and effect of the regulations in question.
- (2) Without prejudice to the generality of subsection (1), the Secretary of State shall consult the [<sup>F128</sup>Welsh Ministers] and the Scottish Ministers before making regulations under this Chapter.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV. (See end of Document for details)*

**Textual Amendments**

**F128** Words in s. 31AF(2) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), arts. 1, 3, [Sch. 1 para. 56\(5\)](#), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [s. 161\(5\)](#) of the Government of Wales Act 2006.

[<sup>F129</sup>CHAPTER 3

SUPPLEMENTARY]

**Textual Amendments**

**F129** [Pt. IV](#): Chapter 3 heading and s. 31B inserted (E.W.S.) (1.9.2002) by [2001 c. 10, s. 37](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), art. 3, [Sch. 1 Pt. 1](#)

**31B Conciliation for disputes**

<sup>F130</sup> .....

**Textual Amendments**

**F130** [S. 31B](#) repealed (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 40, 91, 93, [Sch. 3 para. 47](#), [Sch. 4](#) (with [s. 92](#)); [S.I. 2007/2603](#), art. 2 (subject to art. 3)

[<sup>F131</sup>31C Application to Isles of Scilly

This Part applies to the Isles of Scilly—

- (a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were a county council), and
- (b) with such other modifications as may be specified in an order made by the Secretary of State.]

**Textual Amendments**

**F131** [S. 31C](#) inserted (E.W.S.) (1.9.2002) by [2001 c. 10, s. 39](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), art. 3, [Sch. 1 Pt. 1](#)

**Status:**

Point in time view as at 03/11/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Disability Discrimination Act 1995, Part IV.